



Tigard City Council Meeting Minutes

Date: October 25, 2005
Time: 6:30 p.m.
Place: Tigard City Hall, 13125 SW Hall Boulevard
Tigard, Oregon
Attending: Mayor Craig Dirksen Presiding
Councilor Sally Harding
Councilor Sydney Sherwood
Councilor Nick Wilson
Councilor Tom Woodruff

Absent: --

Agenda Item	Discussion & Comments	Action Items (follow up)
Study Session GIS Coordinator	<p>IT Director Ehrenfeld and City Manager Prosser presented information on the request for a GIS Coordinator Position. (See October 14, 2005, memorandum on file in the City Recorder's office regarding the Creation of New Geographic Information Systems (GIS) Coordinator.)</p> <p>During Council discussion, the following comments were noted:</p> <ul style="list-style-type: none">○ Concern about adding this position now, referring to the hard choices made during the Budget process.○ Support for the position as it appears that it will save staff time in the long-run.○ Concern that City's ability to fund an economic development position in the future not be jeopardized.○ Suggested that an outside resource be used to coordinate and get the GIS internal system updated. <p>Staff noted that this position would be funded from several sources, including the General Fund, and the Water and Sewer Funds.</p>	<p>Council consensus was for staff to proceed and place this before the City Council for consideration.</p> <p>Council requested that the information presented to the City Council contain a breakdown of how the position will be funded; i.e., how much will be funded from the General Fund, Water Fund and Sewer Fund.</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
Study Session Admin. Items	City Manager Prosser reviewed the following administrative items with the City Council:	
	<input checked="" type="checkbox"/> Council received additional meeting materials for Agenda Item Nos. 4, 9, and 11.1. An extra copy of this information was distributed to the City Council.	N/A
	<input checked="" type="checkbox"/> Chamber Representative scheduled to be present during Citizen Communications. Items noted during the October 18 City Council meeting to discuss with the Chamber Representative included: Issues regarding telecommunication legislation and the recent Washington County Visitors Association action regarding Hotel/Motel Tax.	See Citizen Communications – Agenda Item No. 2.
	<input checked="" type="checkbox"/> The Tigard Chamber is holding a 50 th Anniversary event, <i>Harvest Hoedown</i> on November 4. Check for Council member attendance. The Chamber is requesting City sponsorship for \$500.	Consensus of Council was that it would not authorize sponsorship.
	<input checked="" type="checkbox"/> School District is requesting personal contact information. Council members received a copy of what staff prepared to release to the School District.	Consensus of Council was to release the information prepared by staff.
	<input checked="" type="checkbox"/> Rescheduled training session with Joe Hertzberg, December 16, 2005, 12-6 p.m.	Consensus of Council to reschedule as noted and reserve 12-6 p.m. if that much time is needed.
	<input checked="" type="checkbox"/> Community Conciliation Proposal. City Manager Prosser reviewed the Portland State University Proposal for Assessment and Convening of a Collaborative Process for Bull Mountain Development Issues. The cost would be \$15,000 for the initial work plan. City Manager Prosser suggested it might be possible the cost could be split; i.e., the City, Washington County, Bull Mountain interests. During discussion it was suggested that dialogue between new parties would be the	Consensus of Council that the City was not interested in pursuing the proposal. It was suggested that the Council would consider if funding could be found; i.e., a grant.

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	<p>better route to follow. Council members expressed concern about spending this amount of money without the sense that something would come of it.</p>	
Executive Session	<p>The Tigard City Council went into Executive Session to discuss real property transaction negotiations and to consult with legal counsel under ORS 192.660(2)(e) and (h).</p>	<p>Staff shall proceed as directed by City Council to negotiate a real estate transaction.</p>
1. Citizen Communication	<ul style="list-style-type: none"> o Pam Brown, President of the Tigard Area Chamber of Commerce updated the Council on Chamber activities. <p>There was brief discussion about the National Chamber of Commerce's decision to support the position of the telecommunication industry regarding franchise fees. Ms. Brown advised the City Council that the Tigard Chamber supported the City's position.</p> <p>Mayor Dirksen referred to the recent issue regarding Hotel/Motel tax for which a portion was allocated to Chambers of Commerce in Washington County by the Washington County Visitor's Association. President Brown noted the work being done to resolve the issue. Council members asked that the City be contacted if there was anything it could do to support the Chamber.</p>	
	<ul style="list-style-type: none"> o Wade Longworth asked for an update on the "variance" granted for a strip mall on Scholls Ferry Road. <p>City Attorney Ramis noted this related to a Measure 37 claim. At this point the applicant can proceed unless enjoined by the court or if some other action is filed.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
3. Consent Agenda	<p>3.1 Approve Budget Amendment #5 to the FY 2005-06 Budget to Expend Department of Homeland Security Grant Funds for the Washington Square Mall Buffer Zone Protection Plan – Resolution No. 05 – 65</p> <p>A RESOLUTION APPROVING BUDGET AMENDMENT #5 TO THE FY 2005-06 BUDGET TO ACCEPT AND EXPEND DEPARTMENT OF HOMELAND SECURITY GRANT FUNDS FOR THE WASHINGTON SQUARE MALL BUFFER ZONE PROTECTION PLAN</p> <p>3.2 Approve an Amendment to the Tigard Police Officers Association (TPOA) Agreement – Side G Letter</p> <p>3.3 Local Contract Review Board:</p> <ul style="list-style-type: none"> a. Award a Contract for the Construction of Fanno Creek Trail – Segment 7b (Fanno Creek to the Proposed Wall Street) to Andersen Pacific, Inc. b. Authorize an Amendment with Norton-Arnold and Company for Consulting Services to Implement Phase II B of the Urban Renewal Plan Public Outreach Program. 	<p>Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve the Consent Agenda.</p> <p>The motion was approved by a unanimous vote of City Council present.</p> <p>Mayor Dirksen Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Wilson Yes Councilor Woodruff Yes</p>
4. TriMet MOU Discussion – 2 nd Year Progress Report	<p>TriMet General Manager Fred Hansen updated the City Council on the progress for improving transit services within the City. Highlights of his report included status of the commuter rail project, plans for sidewalks, expanded and upgraded bus service, relocation of Line 38, and work completed on a retaining wall and shelter on Pacific Highway. Mr. Hansen noted that TriMet has experienced recent financial challenges, which has slowed the progress on some of the items to be addressed in the MOU.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>In response to a question from Councilor Wilson, Mr. Hansen advised that TriMet would complete the MOU work even if the time period needs to be extended. He also said TriMet would continue with maintenance of service established as a result of the MOU after the expiration of the MOU.</p>	
<p>5. Meeting with ODOT Region 1 Manager Matthew Garrett</p>	<p>Mr. Garrett noted ODOT has pledged \$500,000 to cover the shortfall for the improvement to the Hall Blvd./Highway 99W intersection (an MSTIP3 project). In return, Mr. Garrett requested a conversation about a potential jurisdictional transfer of Hall Blvd.</p> <p>Mr. Garrett referred to issues regarding a crosswalk alignment with the Fanno Creek Path on Hall Blvd. He suggested this issue could be resolved, especially if this would result in a safer pedestrian crossing.</p> <p>Mr. Garrett noted the traffic light is being installed at the library.</p> <p>Mr. Garrett agreed coordination of signal lights should be examined.</p> <p>In response to a request to consider an additional crosswalk at O'Mara, Mr. Garrett explained that crosswalks located close together create a false sense of security and are not safe.</p> <p>There was discussion about the location of the traffic signal and whether it would have been better to locate the signal at O'Mara/Hall Blvd. City Engineer Duenas explained that the O'Mara intersection did not meet the warrants imposed by ODOT, while the signal at Hall/Wall did.</p>	<p>City Council members indicated a willingness to discuss jurisdictional transfer of Hall Blvd.</p> <p>City Engineer Gus Duenas and ODOT employee Dennis Mitchell to resolve the crosswalk issue for the Fanno Creek Path connection.</p>

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5. Meeting with ODOT Region 1 Manager Matthew Garrett continued	Tigard was pleased to receive the TGM grant for the Highway 99W Corridor Study and also looking forward to begin identifying specific projects.	
6. Status Update – TGM Grant – Hwy 99 Corridor	<p>City Engineer Duenas presented the staff report. Key points included:</p> <ul style="list-style-type: none"> ○ ODOT has been supportive. ○ Access management and parallel routes will likely be components of the study. ○ Improvements will be reviewed also for pedestrians and improved circulation. ○ Land use (redevelopment) will be considered. ○ Potentially controversial when more details are produced about possible projects. ○ The next step will be to prepare a Statement of Work with it anticipated that a consultant will be selected in March 2006 and the Study started in April 2006. 	<p>City Engineer Duenas advised staff will keep City Council informed as this project develops.</p> <p>Councilor Woodruff requested opportunity for citizens to give input.</p>
7. Goal Update	<p>City Manager Prosser presented the staff report. See written staff report for a summary of progress on goals.</p> <p>With regard to the progress on the “work with Metro” goal component, Mayor Dirksen noted a meeting was held with area Mayors, JPACT and Metro officials. He suggested information that was generated from this meeting be posted on the City’s website.</p>	<p>Staff to obtain and then post information on the City’s website.</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
8. Public Hearing – Sunrise Annexation	<p>The public hearing was conducted through receipt of oral public testimony. <i>(See Exhibit A for a summary of the public hearing through oral testimony.)</i></p> <p>A request was received to leave the record open for seven days.</p> <p>Written testimony will be accepted by the City of Tigard until November 1, 4 p.m.</p> <p>Applicant rebuttal is due to the City by November 8, 4 p.m.</p> <p>The hearing will be continued to November 22, 2005. No additional testimony will be received.</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Woodruff, to keep the record open for seven days for written testimony; that we allow another seven days thereafter for rebuttal, and move this decision to November 22.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Wilson Yes Councilor Woodruff Yes</p>
9. Annual Police Report	<p>Set over to a future City Council meeting. (City Recorder's note: This item was later scheduled for the November 22, 2005, City Council meeting.)</p>	
10. Waive CWS fees	<p>Associate Planner Pagenstecher presented the staff report. Clean Water Services (CWS) has requested a fee waiver from the City of Tigard to process Code and Comprehensive Plan amendments. Staff recommended the City Council deny the request as standards for a fee waiver were not addressed.</p> <p>Council reviewed and discussed this item with City staff and Kendra Smith of CWS. City Council members discussed pros and cons of the City initiating a Code amendment to facilitate CWS' request as it works to improve water quality and manage water quantity to</p>	<p>Staff will return to City Council with a recommendation and report on impacts of a City-initiated Code amendment.</p>

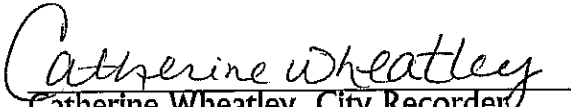
Agenda Item	Discussion & Comments	Action Items (follow up)
10. Waive CWS fees continued	<p>meet the intent of the Clean Water and Endangered Species Act.</p> <p>Mayor Dirksen said it was his understanding it was not possible for the City of Tigard to waive the fee because of a technical issue. City Manager Prosser noted the Intergovernmental Agreement specifies what activities the City of Tigard and Clean Water Services shall provide. The IGA did not include Code amendments and for that reason staff has recommended denial of the request. City Manager Prosser noted that Bill Gaffi, CWS General Manager for CWS left a telephone message about his concerns. The issue is that CWS needs to do some work within the wetlands next to the Durham Plant. The City of Tigard Code does not allow work on the wetlands under the conditions that CWS has requested. Therefore, CWS talked about doing a Code amendment. Because this is not a City-initiated project, there was need for an applicant to bring this forward. According to Mr. Gaffi, City of Tigard staff asked CWS to serve as the applicant; CWS did not feel that this was their issue. In addition, CWS staff members have done some work preparing a draft Code amendment for the City and for that reason, Mr. Gaffi does not think it is appropriate for CWS to pay a fee. Mr. Gaffi asked that if the City Council appears to be inclined to deny this request, that this be set over for further discussion.</p> <p>Mayor Dirksen said he did not think there was any question that the work that CWS wanted to do with regard to stream restoration is something that would be beneficial. He did not think the City would want to stand in the way. He said he would like to find a way to work with CWS to make this happen. CWS</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
10. Waive CWS fees continued	<p>has done work researching the Code and recommending language for an amendment. Mayor Dirksen asked if staff have reviewed the CWS Code changes to determine if they are applicable and if the City would want to adopt them. Associate Planner Pagenstecher advised he has done a cursory review of the work done by CWS and, while it has been well done, some changes are needed.</p> <p>Mayor Dirksen indicated he was in favor of the City staff working with CWS on the proposed amendments. He suggested the City be the initiator of the amendments. He said he did not think this could be decided tonight as further discussion is needed. He requested staff study the issue to determine if this is an appropriate option to pursue.</p> <p>Councilor Woodruff said he was interested in cooperating with other jurisdictions especially if they are doing something on behalf of the City or to its benefit. A Code amendment application fee is \$10,000 and City Manager Prosser explained the fee was based on a time study calculating the staff time for work to process specific types of applications.</p> <p>Councilor Wilson noted that fees are not a tax or a revenue generator, but the intent of the fees was to make the Planning Department self-sufficient, supported by fees from applicants for reviewing their applications. CWS has done some of the work and it would be reasonable to reduce the fees, but not waive the fees. He also noted the need to be consistent with all applicants noting requests from non-profit organizations, churches, and efforts the City would like to support. However, he added that he would support the Mayor's recommendation to step</p>	


Agenda Item	Discussion & Comments	Action Items (follow up)
10. Waive CWS fees continued	<p>back to take a look at a City-initiated Code amendment.</p> <p>Councilor Sherwood asked if CWS did not do this, would the City eventually be required to do this restoration anyway? Kendra Smith, CWS Water Resources Program Manager said, "yes." She said "we have obligations to meet temperature standards and, along Fanno Creek, as many of you probably know, there are no trees for along stretches of that. This project is geared toward improving the conditions along Fanno Creek. The District, over the next five to seven years plans on spending approximately \$1 million in Tigard to do stream enhancement. We found this hurdle and we would like to remove this hurdle so we can use the regional...funds to improve the resources in your jurisdiction."</p> <p>Councilor Sherwood noted the assistance that will be needed from CWS in the downtown area.</p> <p>Councilor Woodruff agreed with Councilor Wilson with regard to consistency. He noted the City is not usually considering something that would need to be done anyway. Councilor Woodruff said he was in favor of receiving more information from staff to determine if a recommendation can be made to accomplish the stream enhancement project in a way that is satisfactory to everyone.</p> <p>Mayor Dirksen said he did not know if a waiver is possible if CWS is the applicant. But, if the City initiates the amendment to the Code, then there would be no reason for CWS to pay a fee. The City Council needs to look at this option with regard to costs and</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
10. Waive CWS fees continued	<p>procedure. Rather than make a decision tonight, he would like to have staff to review and come back to the City Council with a recommendation.</p> <p>Associate Planner Pagenstecher noted this has been “standing in the queue for a long time” and the sooner this is resolved, the better. He noted short staffing, but staff is more than willing to step up.</p> <p>Mayor Dirksen noted appreciation for the constraints that staff has been working under. Direction to staff is to review this further and come back to the City Council with a recommendation. City Manager Prosser said he would ask Tom Coffee to take the lead on this.</p>	
11.1 Washington County Coordinating Committee Discussion	<p>Councilor Harding and City Engineer Duenas presented information to the City Council regarding the possibility of increasing the countywide gas tax from one cent to three cents per gallon. An October 20, 2005, memorandum from City Engineer Duenas to the Mayor and City Councilors and City Manager Prosser regarding <i>Countywide Gas Tax Increase or Local City Gas Tax</i> is on file in the City Recorder’s office.</p> <p>Council members expressed for support for a local city gas tax instead of a countywide gas tax. The following reasons for this preference included:</p> <ul style="list-style-type: none"> ○ Traffic Impact Fees are the funds available to the County. ○ Local control over project selection preferred by the City Council. ○ Small projects could be constructed with gas tax funds. 	

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11.1 Washington County Coordinating Committee Discussion continued	<ul style="list-style-type: none">○ Cities could use gas tax revenues to match grant dollars.○ When the City has control over a small project, it can make adjustments if circumstances change. <p>Councilor Wilson suggested that the County review the proposed widening of Scholls Ferry Road. He noted dollars spent would be more effective at Roy Rogers Road and SW 170th Avenue.</p> <p>City Council members supported Councilor Harding's endeavors to determine how projects are selected for County funding(i.e., what is the criteria).</p>											
14. Adjournment	10:34 p.m.	<p>Motion by Councilor Woodruff, seconded by Councilor Sherwood to adjourn the meeting.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Wilson</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Wilson	Yes	Councilor Woodruff	Yes
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Councilor Wilson	Yes											
Councilor Woodruff	Yes											


Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard

Date: November 22, 2005

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Exhibit A –
Tigard City Council Meeting Minutes of October 25, 2005
for Agenda Item No. 8

8. PUBLIC HEARING (QUASI-JUDICIAL) TO CONSIDER ANNEXATION OF SUNRISE LANE (ZCA 2005-00004)

REVISED REQUEST:

The applicant is requesting annexation of nine (9) parcels containing 19.95 acres into the City of Tigard. An additional 5.66 acres has been included by means of consents by Patricia Marshall, Richard and Michelle Crombie, and Jennifer and Leighton Walsh. Therefore, this annexation is for twelve (12) parcels totaling 25.61 acres.

LOCATION:

North of Bull Mountain Road at 150th and Sunrise Lane; WCTM 2S105DD Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800.

ZONE:

R-7: Medium-Density Residential District.

The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

APPLICABLE REVIEW CRITERIA:

The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

- a. City Attorney Ramis reviewed Rules of Procedure. Copies of the Rules of Procedure were placed at the entrance to the meeting room. A copy of the statement read by City Attorney Ramis is on file in the City Recorder's office.
- b. City Attorney Ramis asked the following questions:
 - Do any members of Council wish to report any ex parte contact or information gained outside the hearing, including any site visits? None reported.
 - Have all members familiarized themselves with the application? All members indicated they were familiar with the application.
 - Are there any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or is there a challenge on the

participation of any member of the Council? There were no challenges.

- c. Mayor Dirksen opened the public hearing.
- d. Staff Report: Associate Planner Pagenstecher presented the staff report. The oral staff report included the following:
 - o Reference to a map of the area under consideration.
 - o Nine parcels proposed for annexation by DR Horton in the original application. As is practice, the City invited six adjacent property owners to participate in annexation at no cost. Three of these property owners agreed to participate. Tax Lot 1800 property owners advised the City before the deadline requesting annexation; two other property owners (Tax Lots 600, 700) requested annexation after the deadline.
 - o The entire annexation proposal is 25.61 acres.
 - o Staff notified all affected agencies and interested parties in the proposed annexation. There were no objections to the proposal.
 - o Staff reviewed the proposal for compliance with applicable policies, code and plan provisions and state statutes.
 - o The proposal meets applicable standards.
 - o The Comprehensive Plan designation and the City's zoning is automatically applied to the subject property upon approval of the annexation. That zone would be R-7.
 - o Reference to attachments contained in the report to the City Council: Ordinance, legal description, assessor's map, vicinity map, and the staff report.
 - o The legal description required a change for Tax Lot 700. The new legal description presented for the record is on file in the City Recorder's office (*Page 3 of 4, Exhibit A*). The change was at the request of the Oregon Department of Revenue after their review.

Council Questions: Councilor Woodruff requested clarification about the six property owners contacted and the three responses received. Associate Planner Pagenstecher advised that three property owners wanted to participate and a fourth property owner wanted to participate but was too late to be added.

Councilor Wilson asked if the City received written consents from all of the property owners and all of the electors? Associate Planner Pagenstecher advised that all provided written consent. DR Horton gathered consents from each of their proposed nine parcels and the other three parcels submitted written consents. Associate Planner Pagenstecher advised he did not conduct an analysis on the consent of the electors.

e. Public Testimony
- Applicants

- o Mimi Doukas, WRG Design, 5415 SW Westgate Drive, Portland, OR 97221, advised she was representing JT Smith Companies and DR Horton. The original application was proposed by the above-named companies. She said they were comfortable with the adjoining additional three properties if that is City policy. Ms. Doukas said they have consent of 100 percent of the property owners within the 19.95 acres and they have all but one resident of the voting members of properties who have also signed on. Therefore, there is one voting person, who is a resident, who has chosen not to participate.

Ms. Doukas advised of concurrence with the staff report that all urban services are available and the land is readily accessible to join the City of Tigard if that is the City Council's will.

Councilor Woodruff asked if all the residents of the parcels are agreeing to annexation voluntarily? Ms. Doukas said, "Yes sir."

Mayor Dirksen noted one elector did not want to participate and asked if this was within the annexation boundary? Ms. Doukas advised that this was someone who resides in the area but is not a property owner.

Councilor Harding asked about the adjacent properties to the proposed annexation area, which are not part of the DR Horton proposal, and if there was an agreement to sell to the developer or do they want to come in as residents of the City of Tigard? Ms. Doukas advised these property owners are independent of the DR Horton efforts. They are simply participating at the invitation of the City and they are not under any agreement with DR Horton.

In response to a question from Councilor Wilson about zoning of an adjacent parcel (noted in yellow on the map before the City Council), Associate Planner Pagenstecher advised that it was the same zoning (R-7).

- Opponents

- o Ken Henschel, 14530 SW 144th Avenue, Unincorporated Bull Mountain, OR 97224, advised he was before the City Council as the Chairman of Citizen Participation Organization 4B (CPO 4B). He advised CPO 4B is a recognized citizen participation organization of Washington County and includes thousands of residents in the Bull Mountain and Tigard areas. He advised that he has a resolution from the members for the City Council and he submitted the resolution into the record. A copy of this resolution, Resolution No. 05-10 of CPO4B, is on file in the City Recorder's office. Mr. Henschel read a portion of the resolution and which advised the City of Tigard that CPO 4B strongly objects to any City of Tigard requirement that a subdivider or developer of land in unincorporated Washington County be required, directly or indirectly, to annex said land to City as a condition of any City acceptance or approval in the development process concerning said development including, without limit, any permit process. This resolution includes the proposed Sunrise Lane Annexation (ZCA 2005-0004) and all others.

Mr. Henschel said the CPO has been before Council previously objecting to these types of annexations where a permit cannot be delivered until property owners agree to annex. The citizens of the CPO have taken a position that they oppose that practice. They have not seen any change in the City of Tigard with that practice and they feel strongly enough that they drafted a resolution on the issue. Mr. Henschel summarized additional segments of the resolution. Until the issue of governance is decided for the Bull Mountain area, Mr. Henschel said "we highly discourage the practice of continued piecemeal annexations on Bull Mountain..." Mr. Henschel said that even though the property owners, in a development situation agree to give their consent to annex, they believe that the consent is implicitly coerced as the property owners could not develop their property without providing such consent. To suggest that the property owners are extremely in favor of joining the City of Tigard or any other City, they take the position that if they were so "keen" on joining, why haven't they joined in the past? He said the reason is because they have the opportunity to develop their land and they have no choice in the matter. If they want to get permits from Tigard, they have to agree to annex and CPO members feel that is inherently wrong. Though 100 percent of the annexations that Tigard has done in the recent past have occurred with the consent of the owners, about 90 percent of the electors in the area were against joining Tigard in November 2004's election. Mr. Henschel noted this was a very unusual dichotomy and goes to support the point of CPO members that those people mostly join the City of Tigard only because they could not develop their land and realize the value of that land without the annexation. Our members find the practice of the City forcing governance on the area as a precondition to the issuance of permits to be inherently unfair.

Mr. Henschel said that at the annexation hearings of September 13 regarding ZCA 2005-0001 to 0003 and ZCA 2004-0004, the City Attorney made a comment that was echoed in the supplemental findings, which stated, "for consents that were provided in connection with a land use approval, the time to challenge the city's authority to impose the consents was during the land use process. In each case the land use process has been completed the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged." Mr. Henschel said this was the Attorney's reason to discount the challenge for that particular annexation. However, in the Sunrise Lane Annexation, the annexation process is taking place prior to the land use process, creating a different standard for different annexations, thus depriving interested parties their legal rights of due process. He said, "We find that particularly onerous."

Mr. Henschel said that developers who annex are required to pay Parks System Development Charges and Traffic Impact Fees to accommodate growth, but to date none of those funds have been used to directly serve the areas being developed, violating the Intergovernmental Agreement and creating an unfair situation both for developers and future residents of those developments.

Mr. Henschel said the requirements to annex have caused developers lengthy delays in the permit approval process – see the staff report for Arlington Heights III for documentation.

Mr. Henschel noted if developers consent to annex, the City of Tigard offers waivers from provisions of the Bull Mountain Community Plan, which is the only comprehensive plan covering Bull Mountain. This practice causes irrevocable harm and stress to the Bull Mountain community. Mr. Henschel said "we think it is plain wrong" especially since the City of Tigard is not directly a provider of urban services to the unincorporated areas of Bull Mountain.

Mr. Henschel said that for these reasons CPO 4B strongly objects to the City of Tigard's practice of forcing annexation as a condition of permit approval, including this annexation, and urges the City of Tigard to cease and desist the practice of forcing annexation as a condition of permit approval.

Mr. Henschel noted he would take questions.

Councilor Woodruff asked if it was Mr. Henschel's position that anyone who would choose to join the City would have an ulterior motive of development and there would be no one who would choose to join

without planning to develop their property. Mr. Henschel said no, that was not their position. He referred to previous testimony from individual who indicated they wanted to annex who were not part of a development. He noted that in the November election, 10 percent did express interest in annexing. He said it was the other 90 percent that concerned them.

> *Announcement was made at this point by Mr. Henschel, not related to the public hearing:* On November 3, Metro representatives will be attending CPO 4B to talk about park planning options. The meeting will be held at CF Tigard Elementary School Library, 7 p.m.

- Lisa Hamilton-Treick, 13565 SW Beef Bend Road, unincorporated Bull Mountain, Oregon advised she was speaking on behalf of Friends of Bull Mountain. She advised they were working with their attorney. She requested the record be kept open for additional seven days to allow the legal questions to be fully addressed and to allow anyone else interested to make comments.

Ms. Hamilton-Treick thanked DR Horton for taking the initiative to contact residents of Bull Mountain and advise them they have the stated desire to comply with the Bull Mountain Community Plan. She commended them for this initiative. She said it was their hope that this would set an example for the future development by building in such a way that it minimizes conflict and complies with land use laws that have been in place, but unfortunately ignored for a number of years. She said she also hoped this development would garner support for developments that are well planned, sensitive to the neighborhood's needs and are respectful of the only comprehensive plan on Bull Mountain.

Ms. Hamilton-Treick referred to the staff report wherein the staff recommends annexation for various reasons including the reason that it will benefit the City of Tigard. She agreed that annexation would benefit the City of Tigard if the City of Tigard has no intention of making capital improvements on Bull Mountain. She listed examples of capital improvements, including expensive road improvements, parks, recreation, and open space. To date, the City has collected revenue in excess of millions of dollars and that revenue has gone to provide for the needs of the City of Tigard. Those large investments have not been made on Bull Mountain. She raised the issue of public relations, which would need to be addressed. Ms. Hamilton-Treick said she did not see any mention in the staff report of how this would benefit the Bull Mountain community.

Ms. Hamilton-Treick noted the size of the lots would be roughly half the size of lots to the east. She said that if one looks at the zoning in the City

of Tigard, for the most part, all of the highest density was placed in the unincorporated area and the lower density has remained in the flat area of Tigard where homes can still be built on 10,000 square-foot lots. Bull Mountain has absorbed the density from the City of Tigard. She said if the lots are not developed as called for in the Bull Mountain Community Plan, then it would definitely be a radical contrast to the development to the east.

Mayor Dirksen responded that parks system development charges (SDCs) collected in the Bull Mountain area are only collected from those areas that are inside the city limits of Tigard, so it would be appropriate for those funds to be spent in the City of Tigard. He also referred to the Bull Mountain Community Plan and said that Metro approached the County looking for greater capacities in 1997, the Bull Mountain area was considered for additional capacity and density. The higher density plans for Bull Mountain were averted only because the City of Tigard advised the County to leave the zoning as it was at that time.

Ms. Hamilton-Treick asked how much of Bull Mountain is in the City of Tigard limits at this time. She said it was her understanding that approximately one-third of Bull Mountain – the northeast area of Bull Mountain – is currently in the city limits of Tigard. She said there were some large pieces annexed recently in the southeast area. Ms. Hamilton-Treick said that in a lot of those areas parks system development charges were collected to accommodate growth in the area. She said she did not think any money has been spent on Bull Mountain from the SDCs. Ms. Hamilton-Treick said she may be wrong, it's a very complicated issue. She said it was her understanding that Metro assigns the density to various counties and then the county assigns densities to the cities and the cities determine where that density would be allocated. In the case of Tigard and unincorporated Bull Mountain, the density was allocated to unincorporated Bull Mountain, which is her understanding. City Manager Prosser advised Ms. Hamilton-Treick that her understanding was incorrect. City Manager Prosser said the City has no authority to assign any sort of density outside of its boundaries; whatever was done on the Mountain was done at the County's request. He further the Bull Mountain White Papers state that in 1997 when Metro was searching for additional density, there was discussion about placing more density on the Mountain and that was averted because Tigard objected. Ms. Hamilton-Treick thanked Mr. Prosser and said that she "stands corrected."

Councilor Sherwood commented on parks. She advised Ms. Hamilton-Treick that up until this year, the previous Councils have said repeatedly that they would not authorize purchase of park land outside of the city limits. The current City Council has asked the Parks and Recreation

Advisory Board to look at land outside the city boundary. She said there were not "millions and millions of dollars" collected through SDCs.

Mayor Dirksen added that one of the problems the City has with the current process of annexations is that areas only become annexed as they are being developed. Two years ago the City attempted a full annexation of the entire area that would have allowed the City to annex areas that were not under development, including parcels suitable for park land. Because that effort failed, that opportunity was lost. Now, as property comes into the City, it is only brought in as it is developed, so no open space has come in to be made available for parks in the area. Ms. Hamilton-Treick said she agreed there are flaws in these processes. She said these are very serious, complex, challenging, and emotional questions. Ms. Hamilton-Treick said she looked forward in the near future to seeing some kind of resolution that the people on Bull Mountain can live with that would have benefit. She said she feels for the Tigard residents to have to share park dollars when they are very park deficient themselves, which creates an unfortunate "tug of war."

- Julie Russell, 12662 SW Terraview Drive, unincorporated Bull Mountain, referred to letters received from CPO 4B and from attorney Lawrence Derr regarding the Consents to Annex. She said Mr. Derr's opinion is that the Consents to Annex are illegal. The process is flawed and not enforcing the Bull Mountain Community Plan because the Plan is in effect regardless whether the properties are annexed. She said that she received the letter inviting neighbors to participate in the annexation when development is occurring. She said that she and her neighbors felt that this was a veiled threat from the City of Tigard inviting them to participate, stating that they would save \$2,500 or \$2,700 of the cost if eventually – when they would be forced to annex. She said that she did not feel that this was an invitation at all and, again, said that she felt that this was a veiled threat.

She said the School Board has said that absolutely they did not willingly consent to the annexation. In the beginning the Board voted to oppose the annexation. Then, only when they were told that the City of Tigard would refuse to do the final inspection and prevent Alberta Rider from opening on time, did they decide to change their mind and vote for the annexation.

Ms. Russell said she was concerned the City of Tigard is doing all of the annexations without being prepared to purchase park land or to pay for the infrastructure that will be required to serve this area. She described the property to be annexed at 5,000 square foot lots where some of the homes will be 3,000 square feet. She asked where the children would play and was the City prepared to purchase two acres of park land to

service that community? She said the goal for Tigard is to provide 11 acres of parks per 1,000 citizens.

Ms. Russell said that Alberta Rider School is not even open yet and they have 424 students. The capacity for that school is 600. She questioned whether work has been done to address school capacity issues noting the Rider school will be full next year.

Ms. Russell noted her concerns with traffic impact from 160 cars per day on Bull Mountain. She said the proposal did not show the access planned to an arterial. She commented that people wait through three cycles of lights at Bull Mountain Road/99W at all times of day. She said she did not see this addressed by the City of Tigard.

Ms. Russell referred to park land purchases noting the City of Tigard was already park deficient and this annexation would add to that deficiency. She said that if she were a citizen of Tigard, she would want the money spent in the City right now.

Ms. Russell noted issues with SDC and TIF collected to accommodate growth. She said this money is not being spent on Bull Mountain and questioned where it was being spent.

Ms. Russell referred to the staff report statement that the City of Tigard will be benefited and said money would be funneled off the Mountain into the City of Tigard. She said it does not benefit the residents of that area.

Ms. Russell asked what is the City's proposal to catch up with the park deficiency. She questioned what would happen when the Mountain is built out and there is no park land left anywhere. She said she did not think this was good planning or a way to treat citizens and it is not fair to the residents of Tigard.

Mayor Dirksen addressed Ms. Russell and noted the issues she brought up pertained to additional development taking place in this area. He said that he would ask, at least rhetorically, how any of those issues with regard to transportation system planning, park deficiency, or school capacity – how would those would be improved if this annexation did not take place. Whether or not the annexation occurs, the development will take place. Mayor Dirksen said it was moot with regard to capacity of schools, roads or anything else.

Mayor Dirksen noted the Tigard Transportation System for the City of Tigard considers and addresses the requirements assuming full build out so eventually it is known where the capacity will come from.

Mayor Dirksen referred to salvation of open space for park land and said that he was aware that Ms. Russell was one of the individuals who aggressively opposed Tigard's annexation of the entire Bull Mountain area earlier. This issue could have been addressed with annexation of open space. Again, that opportunity has been lost because of the failure of that annexation.

Mayor Dirksen said the concerns Ms. Russell noted are all of worth, but none of those are addressed by whether or not this area is annexed.

Ms. Russell said the zoning was technically R-6 until it is annexed to the City of Tigard, which is six units per acre as opposed to seven units per acre. City Manager Prosser said this was incorrect. Mayor Dirksen said that as Ms. Russell knew, because she had been informed previously, the actual number of the units per acre, under City of Tigard R-7 designation, is lower than under the County's R-6. The City deducts from the acreage all public facilities and rights of way before the capacity is determined and the County does not. The totals result in a higher number of units of capacity under the County plan than under the City plan. Ms. Russell said that in the case of Summit Ridge, it would have been lower in the County. She said that for some of the others, it was true that the City of Tigard's calculation is lower, but there were other cases it would have been lower if developed in the County. Mayor Dirksen said he would need to see individual figures. Ms. Russell referred information in a staff report.

- Gretchen Buehner, 13249 SW 136th Place, Tigard, Oregon, said she thought it was essential to provide a correction to some information previously brought the City Council's attention. She said Mr. Henschel testified that the CPO had voted for the resolution, which was discussed. At the last CPO meeting on October 6, she said she specifically asked if the CPO was going to take a position on this proposed annexation. She said she was told something would be done later in the meeting. No vote was taken at that meeting. Ms. Buehner said she did not receive any notice of another general meeting of the CPO since the October 6 meeting to address this issue. She said she did not know when the CPO took the position on this annexation since there was no notice of a meeting and said it must have been at their Steering Committee. There was no general meeting with an opportunity to vote on this issue.

Ms. Buehner referred to the Arlington Heights application brought up in earlier testimony. She said the delay in that application had nothing to do with the City of Tigard, but due to a land use decision from another jurisdiction, which affected how the treatment of trees being taken off a

piece property would affect the application process. This caused a one-year delay in that application being filed.

Ms. Buehner commented on the park issue raised and said she noticed in the proposed DR Horton plan approximately five acres of the 19.95 acres are dedicated to open space. She said she recommended that the City initiate discussions with the Horton Company to acquire this property as park land as it is very close to the City-owned Cache Creek property, which would provide access from the Fern Street area to Bull Mountain Road.

- > City Attorney Ramis counseled the City Council on process. He said clarifying testimony could be accepted; however, the proponents must be allowed to have the last say if they wish.
- o Ken Henschel addressed the City Council again representing CPO 4B. He apologized that he forgot to mention and that Ms. Buehner was correct regarding the last CPO meeting. He forgot to verbally mention that their bylaws allows them, in certain instances, where there is a timeliness issue, to make a decision in a Steering Committee meeting, and that will be ratified at the next general meeting. He said that is what they are doing. He apologized for not mentioning this earlier.
- o Janice Ward, 15140 SW Sunrise Lane, asked about a proposed water facility that will be constructed by the City of Tigard. She heard that if her property was surrounded by three sides, then Tigard could annex her property and asked if this is correct? City Manager Prosser said the City is exploring the possibility of acquiring land in the area for an additional water reservoir, but that has not come to a conclusion. City Manager Prosser clarified that if her property is surrounded by three sides, but there is a fourth side that is not contiguous to the City, then the City cannot unilaterally annex the property. She asked whether the road would constitute a "side." City Manager Prosser said this would depend on whether or not the road eventually is annexed. Ms. Ward indicated on a map the location of her property. City Manager Prosser said that for a property to be annexed, it must be contiguous to the City and if the road is not annexed, then her property is not contiguous. There is the possibility that the City might consider annexing the road at some point. If Ms. Ward's property become completely surrounded by the City, her property would then constitute what is called an "island." At that point, the City could initiate. Mayor Dirksen added that the City "could" annex, but not would necessarily would. Ms. Ward asked if that would not be a "nice deal for you?" City Manager Prosser said there are several islands in the City that have not been annexed. Mayor Dirksen added that those islands have been there for a long time. During discussion on this point, City Attorney Ramis noted that the conversation was "a little

far afield” from the application. Mayor Dirksen suggested Ms. Ward meet with staff to discuss her particular issue for clarification.

- o Lisa Hamilton-Treick commented on DR Horton’s plans to not build on five acres; however, she wanted it to be made clear that the majority of that land is not buildable. She noted that DR Horton does not plan to build as many homes on the site as it could. She also commented that there were no plans for walking path.

She said she wanted to respond to a question that was posed to Ms. Russell about how would this area develop differently if it was not annexed into Tigard. She said she understands that the City of Tigard is about 12,000 acres and the unincorporated area of Bull Mountain is close to 1,200 acres with the expansion area of 500 acres. In addition there is some area in the UGB, which will probably make that area about 2,200 acres. Ms. Hamilton-Treick referred to an option to incorporate the City of Bull Mountain and if this were to be done, they could set up their own tax rate if the citizens voted for it. The codes, ordinances and comprehensive plan would be redone and they could look at the formation of a park and recreation district, which she said she believed the people on Bull Mountain would strongly support. She referred to limited dollars for the area to be serviced and noted that Tigard consisting of 12,000 acres and 45,000 people and a tax rate that was set a long time ago. She said that in a recent *Cityscape* article the Mayor noted there was a serious deficiency that increases. She said they would be given a unique opportunity to try to collect dollars in an area that has a need and to invest those dollars in the area that has needs rather than to have those funds collected and disbursed over a very large area to meet park deficiency needs and infrastructure needs. Ms. Hamilton-Treick said this would be the difference – to define a boundary in an area that can be incorporated and named something such as Bull Mountain, Oregon and collect the dollars, set the tax rate, and address park and recreation needs through additional funding supported by the residents.

- Rebuttal

- o Michael Robinson, Attorney at Law representing the Applicant, 1120 NW Couch Street, 10th Floor, Portland, Oregon 97209-4128 advised:
 - 1. As the City Attorney said at the initiation of this hearing the task is to look at the applicable approval criteria. None of the testimony the City Council heard tonight goes to that approval criteria. The only substantial evidence before the City Council is from the applicant and the staff report. Both of those documents demonstrate that the approval criteria are satisfied if annexation were to be granted.

2. The Council received a request that the record be left open for seven days. If the City Council grants the request, the applicant requests under ORS 197 that the Council allow an additional seven days for the applicant to respond after the close of the first seven-day period.
- f. Council discussed the request to leave the record open. A summary of the discussion about how to proceed with the hearing is as follows:

Written testimony will be accepted by the City of Tigard until November 1, 4 p.m.

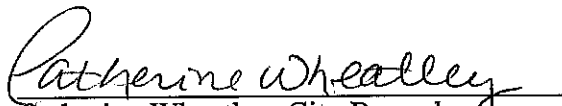
Applicant rebuttal is due to the City by November 8, 4 p.m.

The hearing will be continued to November 22, 2005. No additional testimony will be received.

After discussion, there was a motion by Councilor Sherwood, seconded by Woodruff, to keep the record open for seven days for written testimony; that we allow another seven days thereafter for rebuttal, and move this decision to November 22.

The motion was approved by a unanimous vote of Council present.

Mayor Dirksen	Yes
Councilor Harding	Yes
Councilor Sherwood	Yes
Councilor Wilson	Yes
Councilor Woodruff	Yes


Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard

Date: November 22, 2005

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